

## **REMARKS**

Claims 1, 4, 5, 7, 9-11, 13 and 15 were rejected and remain pending in the instant application. Claims 1, 7, 13 and 15 are amended herein. Support for all amended claims can be found in the specification, and no new matter had been added by these amendments. Reconsideration of the claims in view of the amendment and the following remarks is respectfully requested.

### **Double Patenting**

Claims 13 and 15 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/550,925. The provisional rejection stated that although the conflicting claims were not identical, they were not patentably distinct from each other because they claimed essentially the same subject matter.

Applicants have amended claims 13 and 15 to clarify that the reference photograph is a photograph depicting a non-anatomical object or a photograph depicting an article. These claims recite a wireless mobile phone and method of operation in which the mobile phone operates in a first or a second mode depending on authentication of a user by comparison of a photograph taken on power-up to a reference photograph of an article/object.

In contrast, claim 1 of copending Application No. 10/550,925 recites an apparatus with an input mechanism configured to facilitate input of a fingerprint of a user. In this claim, the apparatus operates in a first or a second mode depending on authentication of a user by input of a fingerprint.

Thus, claims 13 and 15 claim subject matter patentably distinct from the subject matter claimed in the cited copending application. However, should the Examiner maintain this rejection but find that the pending claims of the current application are otherwise allowable, the Examiner is kindly requested to contact the undersigned for further discussion with regard to a terminal disclaimer.

### **Claims Rejections Under 35 USC § 103**

Claims 1, 4, 5, 7, 9-11, 13 and 15 were rejected under 35 USC 103(a) as being unpatentable over US Patent Application Publication No. 2003/0129964 to Kohinata (hereinafter *Kohinata*) in view of US Patent No. 6,883,716 to De Jong (hereinafter *De Jong*).

Applicants have amended claims 1, 7, 13 and 15 in order to proceed to allowance. Independent claim 1 has been amended to recite an apparatus comprising:

a plurality of components including a component to store a reference photograph, wherein the reference photograph is a photograph depicting an article;

a camera; and

operating logic to activate the camera on power-on or reset to take a photograph, compare the photograph to the stored reference photograph to authenticate a user, and to operate the components depending on whether the user is successfully authenticated based at least in part on said comparison of the photograph to the reference photograph,

wherein the operating logic is configured to allow a first set of functions to be made available after successful authentication of the user and

wherein the operating logic is further configured to allow a second set of functions to be made available after unsuccessful authentication of the user, the second set of functions including fewer functions than the first set of functions

Thus, as amended, claim 1 recites an apparatus with a camera that is activated on power-on to take a photograph, which is then compared to a reference photograph depicting an article in order to authenticate the user. A first set of functions is made available after successful authentication, and a second set including fewer functions is made available after unsuccessful authentication of the user.

Kohinata does not teach or suggest these features. Instead, Kohinata teaches using a combination of temperature and a user's fingerprint to authenticate the user (see e.g. paragraphs [0038], [0043] and Fig. 1). A fingerprint image is not a photograph depicting an "article," a "non-anatomical object" or a "manufactured article." Therefore, Kohinata does not teach "wherein the reference photograph is a photograph depicting an article."

Nor does Kohinata teach “operating logic to activate the camera on power-on or reset to take a photograph . . . .” Instead, Kohinata’s biodata obtaining unit includes a CCD camera that images a user’s fingerprint “by detecting an electrostatic capacity that changes upon being touched by a finger of the user.” The biodata obtaining unit obtains the fingerprint or fingerprint data upon receiving an instruction from the temperature comparator unit (see [0043]).

Therefore, Kohinata does not teach or suggest the recitations of claim 1.

De Jong cannot remedy the deficiencies of Kohinata. De Jong merely teaches a smart card that includes an image of a user’s face, with additional information hidden in the image. De Jong does not teach a photograph depicting an “article,” a “non-anatomical object” or a “manufactured article.” Thus, like Kohinata, De Jong teaches only an image of an anatomical feature.

De Jong also does not teach “operating logic to active a camera on power-on or reset to take a photograph . . . .” De Jong teaches no camera. Instead, the authenticity of the photo on the smart card is determined based on the information hidden within the photo itself, rather than by comparison to a reference photograph depicting an article (see e.g. Fig. 4 and col. 6, lines 43-53).

For at least these reasons, the cited combination of Kohinata and De Jong fails to teach or suggest every element of claim 1. Claim 1 is therefore allowable over the cited references.

Claims 7, 13 and 15 have been amended to include recitations substantially similar to those of amended claim 1. Therefore, for at least the same reasons, claims 7, 13 and 15 are also allowable over the cited references.

Claims 4-5 and 9-11 depend from claims 1 and 7, respectively, incorporating the recitations of the base claims. Therefore, for at least the same reasons, claims 4-5 and 9-11 are also allowable over the cited references.

## **Conclusion**

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 622-1711 if the Examiner believes that an interview might be useful for any reason.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a).

If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1542. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,  
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: December 7, 2009

By: /Jo Ann Schmidt/  
Jo Ann Schmidt  
Reg. No.: 62,255

Schwabe, Williamson & Wyatt, P.C.  
U.S. Bank Centre  
1420 5<sup>th</sup> Ave. Suite 3010  
Seattle, WA 98101